IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.928 OF 2005
IN
WRIT PETITION NO.2718 OF 2002

Shaikh Riyasat Ali Appellant

vs.

1. The Presiding Officer,
Central Government Industrial
Tribunal No.2, Mumbai & anr. Respondents

Mr.I.A.Saiyed for the appellant.

Mr.P.C.Pavaskar for the respondent no.2.

CORAM : R.M. LODHA &
ANOOP V. MOHTA, JJ.

DATED : 27th January 2006

P.C.

Heard Mr.I.A.Saiyed, the learned counsel for the appellant and Mr.P.C.Pavaskar, the learned counsel for the respondent no.2.

2. The appellant (employee) was employed with Central Cottage Industrial Corporation of India Ltd. as typist-cum-assistant. By the order dated 26th November 1996 he was transferred from buying department to the store department with immediate effect. On that very day, he resigned from the service with immediate effect.

The communication of resignation reads thus:

" Date: 26.11.96

The Branch Manager,

CCIC,
Mumbai Branch

Dear Sir,

. I the undersigned resigned from the service with immediate effect. This is for your information please.

. Thanking you,

Sd/-
Riyasat Ali."

3. On next day i.e. 27th November 1996 the employee wrote a letter to the Branch Manager stating therein that the order of transfer was issued with malafide intention to harass and victimise him. He asked the Branch Manager to withdraw the transfer order with immediate effect and allow him to work in the buying department.

4. On 28th November 1996 the resignation tendered by the employee was accepted after waiving the notice period. The order dated 28th November 1996b reads thus:

" CCIC OF INDIA LTD.
....
No.536 28.11.1996

OFFICE ORDER

I am directed to convey that the Management is pleased to accept the resignation of Mr.Riyasat Ali, Typist-cum-Assistant, Mumbai Branch with effect from 28th November 1996 (AN) after waiving the notice period.

His dues may be paid on production of Clearance Certificate.

sd/-
M.L.Chugh
Addl.Genl. Manager (Pers.)"

5. The employee on 29th November 1996 sent a letter to the Managing Director of the Corporation stating therein that due to tension he took drastic step of giving his resignation. He stated in the said letter that the tension was created by Mr.T.E.P. Raja (Assistant Manager).

6. Then the employee raised industrial dispute which was referred to the Central Government Industrial Tribunal No.2, Mumbai for adjudication.

7. The Central Government Industrial Tribunal recorded the evidence and after hearing the parties by his award dated 20th May 2002 held that there was no illegality committed by the management in accepting the resignation of the employee with effect from 26th November 1996.

8. Aggrieved by the award of the Central Government Industrial Tribunal passed on 20th May 2002, the employee filed writ petition before the learned Single Judge of this Court. The learned Single Judge held that no interference was called for in the award of the Industrial tribunal and, consequently, dismissed the writ petition by the order dated 8th August 2005.

Aggrieved thereby, the present appeal has been preferred.

9. Mr.I.A.Saiyed, the learned counsel for the appellant - employee submitted that the resignation letter dated 26th November 1996 was not voluntary but due to the harassment caused by Mr.T.E.P.Raja (Assistant Manager (Administration)) to the employee and if in the moment of human weakness such resignation was tendered by the employee, on the application made by him for withdrawal of such resignation, the management ought to have granted the same. He would submit that it was open to the employee to withdraw the resignation within the notice period despite that in the resignation letter he requested the management to accept the resignation forthwith with immediate effect. Mr.I.A.Saiyed, the learned counsel relied upon three judgments of the Supreme Court, (i) Dr.Prabha Atri v. State of U.P. and others, **(2003) 1 SCC 701;** (ii) Punjab National Bank vs. P.K.Mittal, **1989 Supp.(2) SCC 175** and (iii) Shambhu Murari Sinha v. Project & Development India Ltd. & anr., **(2002) 3 SCC 437**.

10. The Central Government Industrial Tribunal held in unequivocal terms that the employee tendered the resignation letter dated 26th November 1996 voluntarily and once the said resignation letter was accepted, the

question of his termination did not arise. While holding that the resignation letter by the employee was voluntary, the Tribunal considered the evidence of the employee himself wherein he admitted that he had given his resignation. In the resignation letter dated 26th November 1996 not a word is stated that he was compelled to resign because of the threat given by Mr.T.E.P. Raja. The Tribunal noticed the two subsequent letters dated 6th December 1996 and 31st December 1996 written by the appellant to the Managing Director and the Manager respectively. In these two letters the employee has not stated a word that it was due to the threat given by Mr.T.E.P.Raja that he resigned. The Tribunal referred to the evidence of Mr.T.E.P.Raja and the evidence of employee, accepted the evidence of Mr.T.E.P.Raja. As a matter of fact the evidence of Mr.T.E.P.Raja get support from the letter of the employee dated 12th December 1996. In his letter dated 12th December 1996 addressed to the Additional General Manager the employee stated that on account of his personal difficulties and family circumstances he resigned from the service, so that he could go back to his village and settle down there. He then stated that after giving resignation when he consulted his children, wife and parents, he decided to withdraw the resignation as the children were not agreeable to go to the village before their studies were completed. He requested that

the resignation submitted by him on account of personal difficulties may be allowed to be withdrawn. In this letter, there is no whisper that there was any threat given by Mr.T.E.P.Raja and that compelled him to give resignation.

11. Whether the resignation tendered by the employee was voluntary or not is a question of fact and the industrial tribunal after recording the evidence and on its due appreciation held that the resignation was voluntary. The learned Single Judge did not find any justification in interfering with the finding of fact. We do not find any error in the approach of the learned Single Judge.

12. As regards the three judgements relied upon by the learned counsel for the appellant, we find that none of the judgements helps the case of the appellant. In the case of Dr.Prabha Atri, the delinquent was issued the memo bringing to her notice her misconduct and she was asked to submit her explanation failing which she was informed that the management would proceed with her as per the service rules. On receipt of the said memo, the delinquent replied thus - "Your letter is uncalled for and should be withdrawn. I have been working in this hospital since 10-5-1978 and have always worked in the best interest of the patients. It is tragic, instead of

taking a lenient view of my sickness you have opted to punish me. If the foregoing is not acceptable to you then I have no option left but to tender my resignation with immediate effect.". Thereupon the delinquent was informed that suspension order cannot be withdrawn and since her explanation was not found satisfactory, her resignation was accepted with immediate effect. By a separate order on that very day, it was decided that domestic enquiry should not be proceeded with in view of her resignation. Thereafter, the delinquent by her letter stated that she never resigned and that unnecessary something has been read in his letter dated 9.1.1999. In the backdrop of these facts, the Supreme Court held that the words "with immediately effect" in the letter dated 9.1.1999 could not be given undue importance dehors the context, tenor of language used and the purport as well as the remaining portion of the letter indicating the circumstances in which it was written. In so far as the present case is concerned, the resignation letter dated 26th November 1996 is voluntary and the words "with immediate effect" has to be given its plain meaning and that is what has been held by the Industrial Tribunal. The case of Dr.Prabha Atri thus does not help the appellant.

13. In Punjab National Bank v.P.K.Mittal (supra) , the delinquent who was a permanent officer in the bank,

purported to resign from service of the bank due to personal reasons. He added that the date of receipt of the letter should be treated as the date of the commencement of the notice period so that, inclusive of the same, his resignation would become effective on June 30, 1986. However, the management accepted the resignation much before the expiry of the notice period by waiving the condition of notice. In this backdrop, the Supreme Court held that the delinquent's resignation could take effect either from the date chosen by him and mentioned in the notice or on the expiry of three months and the bank could not have accepted on any earlier date. Obviously, this case does not help the appellant rather it goes against him because it was open to the management to accept the appellant's resignation on the date chosen by him i.e. with immediate effect and that is what has been done.

14. The third case relied upon by the learned counsel for the appellant in Shambhu Murari Sinha v. Project & Development India Ltd. (supra) also does not help the case of the appellant. The case of Shambhu Murari Sinha arose out of a voluntary retirement scheme framed by the employer. The appellant in that case applied for voluntary retirement on 18th October 1995 which was accepted by the management on 30th July 1997 with the condition that the release memo along with detailed

particulars will follow. On 7th August 1997 the appellant sent a letter withdrawing his option from voluntary retirement scheme by the registered post, but no response was received. The appellant sent a reminder on 24th September 1997 withdrawing his option from the scheme. This letter was also received by the company on 25th September 1997, but no response and then by memo dated 25th September 1997 the appellant was sought to be released from service with effect from 26th September 1997. The action of the company came to be challenged by the employee. Dealing with the provisions of the scheme, the Supreme Court held that the voluntary retirement scheme did not provide for any condition that once an option to voluntary retirement was exercised by the employee and was accepted by the employer, the employee was not entitled to withdraw from the voluntary retirement. Dealing with the effective date, the Supreme Court held that it was open to the appellant to withdraw his option for voluntary retirement even after his acceptance, but before actual date of the release from the employment. We are afraid, the said judgement of the Supreme Court has no application.

15. Mr.Saiyed, the learned counsel for the appellant then stated that in relation to some employees who had tendered resignations and whose resignation letters were accepted were later on permitted to withdraw the

resignation letters. However, we find that no case of discrimination was made out before the Tribunal. The Tribunal was justified in holding that the facts relating to resignation of those employees do not apply to the case of the present appellant. Having considered the facts, we do not find any merit in this contention.

16. The appeal does not deserve to be admitted and is dismissed in limine.

(R. M. LODHA, J.)

(ANOOP V. MOHTA, J.)